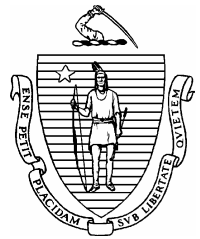


Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 711

IN THE MATTER OF RICHARD KENNEY

Appearances: Karen Beth Gray, Esq.
Counsel for Petitioner

Richard Kenney, *pro se*

Commissioners: Daher, Ch., Roach, Todd and Maclin

Presiding Officer: Commissioner M. Tracey Maclin

DECISION AND ORDER

I. Procedural History

On September 16, 2004, the Petitioner initiated these proceedings by issuing an Order to Show Cause (OTSC) under the Commission's Rules of Practice and Procedure.^{1/} The OTSC alleges that the Respondent, Richard Kenney (Kenney), a member of the Board of Selectmen in the Town of Kingston (Town), violated G.L. c. 268A, § 23(b)(3) by asking the Chief of Police to change a seat belt ticket to a warning for a Town resident and board member that Kenney knew. The OTSC further alleges that by doing so, Kenney knew or had reason to know that he was acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that the Chief of Police and/or the Town resident could improperly influence or unduly enjoy Kenney's favor in the performance of his official duties and/or that Kenney was likely to act or fail to act as a result of kinship, rank, position or undue influence of the Town resident.

On October 21, 2004, Kenney filed an Answer to the OTSC. In his Answer, he admitted a number of the factual allegations in the OTSC, but otherwise denied that he violated G.L. c. 268A, § 23(b)(3).

A pre-hearing conference was held on November 17, 2004. On that same date, the parties submitted Stipulations of Fact and Law as well as Document Stipulations.

An evidentiary hearing was held on December 1, 2004. The Petitioner presented a closing argument to the Presiding Officer on that date. Kenney waived his right to present a closing argument, relying instead on his subsequent written submissions.^{2/}

The Petitioner submitted a brief on January 28, 2005. Kenney submitted letters on January 27, 2005 and February 1, 2005.^{3/}

The Commission began its deliberations in executive session on this matter on December 20, 2004.^{4/} In rendering this Decision and Order, each undersigned member of the Commission has considered the testimony, the evidence in the public record including the hearing transcript and the arguments of the parties.

II. Record Issues

Subsequent to the evidentiary hearing on December 1, 2004, several issues were raised concerning the contents of the record in this matter.

A. The Letter from Robert Pinato

After the conclusion of the evidentiary hearing on December 1, 2004, the Commission received a letter dated November 30, 2004 from a Town resident, Robert Pinato, submitted on behalf of Kenney.^{5/} The Presiding Officer provided the parties with an opportunity to submit comments on the letter. Kenney submitted no comments. The Petitioner objected to the inclusion of the letter as part of the record on the grounds that it was not presented during the evidentiary hearing, it was hearsay, it contained irrelevant material, it was not under oath or affirmation and it was an ex parte communication. By Order dated February 25, 2005, the Presiding Officer struck the letter from the record on the grounds that it was submitted in an untimely manner, it constituted hearsay and it was an impermissible ex parte communication in violation of the Commission's Rules of Practice and Procedure.^{6/}

B. Petitioner's Motion for Exclusion of Certain Documents

On February 1, 2005, the Petitioner filed a Motion for Exclusion of Certain Documents (Motion) seeking to exclude a memorandum^{7/} and a newspaper article^{8/} that Kenney had submitted as enclosures to his January 26, 2005 letter to the Commission. The Petitioner objected to these documents on the grounds that the memorandum was previously determined to be inadmissible during the evidentiary hearing on December 1, 2004 and the newspaper article, which was not offered at the hearing, was irrelevant.

By Order dated February 25, 2005, the Presiding Officer allowed the Motion in part and denied it in part. The Motion was allowed by striking the memorandum from Kenney's submission on the grounds that he had failed to show that the decision to exclude it during the evidentiary hearing on the basis that it was confidential,^{9/} was erroneous.^{10/} Further, Kenney was allowed to and did, in fact, question Gordon Fogg about the relevant statements in his memorandum during the December 1, 2004 evidentiary hearing. The Motion was denied by allowing the newspaper article to remain part of Kenney's submission on the grounds that it was relevant to his argument as to what action the Commission should take on this matter and that it was already in the public domain.

III. Findings of Fact

1. Kenney was elected to the Town of Kingston's (Town) Board of Selectmen (Board) in 1999. He was subsequently re-elected to another term expiring in 2005. At all times relevant to this matter, Kenney was a Selectman in Town.

2. Kenney is a former Boston police officer. He was a motorcycle police officer for three or four years.
3. Gordon Fogg was hired as a police officer in Town in 1974 and promoted to the position of Chief of Police (Chief Fogg) in 1996. He retired as Chief on October 1, 2004.
4. Chief Fogg first meet Kenney when Kenney was elected to the Board. Chief Fogg does not socialize with Kenney or other members of the Board. He and Kenney are not friends. Their interactions have been only as Selectman and Chief.
5. Brian Caseau was elected to the Town's School Committee, the Silver Lake Regional School Committee (School Committee), in May 1998. In May 2001, he was re-elected to another term from which he resigned on October 31, 2003. At all times relevant to this matter, Caseau was an elected member of the School Committee.
6. In September 1999, Kenney was appointed by the Board to the Town Owned Property Evaluation Committee (Property Committee). In October 1999, Caseau was appointed by the Board to the Property Committee from which he resigned in June 2001. Kenney nominated Caseau and voted in favor of his appointment.
7. The Board also appointed Caseau to the Town's Zoning Board of Appeals in May 2000 which appointment expired in June 2001. Kenney voted in favor of Caseau's appointment.
8. In March 2000, both Kenney and Caseau were elected to the Town's Democratic Committee.
9. Kenney knew Caseau and knew that he was an elected School Committee member. Kenney does not consider Caseau a social friend, although they have had a beer together from time to time after a meeting or on one or two other occasions.
10. Chief Fogg knew Caseau from being in the community and as a member of the School Committee. He did not have a personal relationship with Caseau.

The Ticket

11. In May 2001, the policy of the Town's Police Department concerning tickets was that a Town police officer would enforce the traffic laws of the Commonwealth within the Town and issue citations and take other actions as appropriate. A police officer at the scene has the discretion to do nothing, to issue a verbal warning or to issue a written warning. He may also issue a citation or make an arrest depending on the circumstances.
12. A police officer may issue a ticket to an individual whenever he deems there has been a violation of the law. The individual is either issued a fine which he pays or contests in court.
13. A ticket and a citation are synonymous and may be used interchangeably. A warning is a ticket, but there is never a fine involved and there is no further action beyond the issuance of a warning.
14. According to Chief Fogg, the term "fixing a ticket" means to take some action outside of the proper legal channels to make the ticket go away or to change it from a citation to a warning. He also testified that once a ticket has been given, it cannot be converted into a warning because it is against the law.^{11/}

15. On May 7, 2001, a Town police officer stopped Caseau for an expired inspection sticker on his vehicle. Rather than write him for the inspection sticker violation, the police officer chose to write Caseau a ticket for a seat belt violation.^{12/}
16. There is a \$25 fine for a seat belt violation^{13/} and a \$35 fine for not having a valid inspection sticker. There is no insurance surcharge for a seat belt violation.^{14/}
17. After Caseau was issued the ticket for the seat belt violation, he had the option of either paying the fine or requesting a hearing.^{15/}

Discussions About the Ticket

18. The 2001 Town Meeting began on May 7, 2001 and continued the next night on May 8, 2001.
19. On the first night of the Town Meeting, in response to a greeting by Kenney, Caseau told him that he had just received a ticket for a seat belt violation.^{16/} Although Caseau did not ask Kenney to do anything about the ticket, Kenney wondered why else would he tell him about it. Kenney did not tell Caseau that he would even try to do anything. Kenney took it upon himself to ask Chief Fogg if he could make it a warning because there would be no financial situation involved for Caseau who was broke and had been out of work for five or six months.
20. At the first night of the Town Meeting, Kenney asked Chief Fogg to change Caseau's seat belt violation ticket to a warning. Chief Fogg testified that Kenney did not give him any reasons for asking him to change the ticket. He told Kenney to have Caseau call him about it the next day. Chief Fogg believed that Kenney was acting as a Selectman when he talked to him.^{17/}
21. Kenney saw Caseau outside the Town Meeting. He told Caseau that Chief Fogg had said that he could give him a call in the morning. He also said that maybe Chief Fogg could help him out with a warning.
22. Caseau called Chief Fogg the next morning at the Police Station. Caseau told him that he had not asked Kenney to intervene on his behalf. He said that the officer had been very good to him and had already given him a break because he had stopped him for an inspection sticker and chose only to write him for the seat belt violation. Chief Fogg told Caseau that he was very uncomfortable with the whole thing because Kenney was a Selectman and Caseau was on the School Committee. In keeping with his usual practice when people asked about tickets, Chief Fogg explained to Caseau the process for applying for a hearing.
23. Chief Fogg did not change Caseau's ticket.
24. At the continuation of the Town Meeting the next night, Kenney asked Chief Fogg how he made out with the ticket. He asked Chief Fogg why he had Caseau call him if he was not going to do anything and that he should have just told Kenney that. Chief Fogg told Kenney that he wanted to talk to Caseau to explain the appeal process and to make sure that the police officer had treated Caseau properly. When Chief Fogg told Kenney that he could not change the ticket to a warning, Kenney responded "Oh, bull, Bull or something, It's done all the time." and walked away. Kenney appeared angry and was a little grouchy with Chief Fogg.

25. Chief Fogg testified that after this conversation between him and Kenney, Brian Donnelly, a member of the School Committee, approached Chief Fogg with a big grin on his face. Donnelly said "Hey, Chief, thanks for fixing those tickets for me."
26. Chief Fogg was very uncomfortable because Kenney had approached him in a very public place and he knew that what Kenney had asked him to do was illegal. He felt pressure because Kenney was one of his bosses.^{18/}
27. Chief Fogg documented the incident with Kenney with a memo to the file dated May 10, 2001. He wrote that Kenney had asked him to fix a ticket for Caseau because he was very concerned about the appearance of a conflict of interest. He had a member of the Board asking him, the Chief, to fix a ticket for a member of the School Committee. Chief Fogg thought that it was illegal so he documented what took place for future reference because he did not want to end up on the wrong side of the podium before the Commission.
28. Chief Fogg testified that he has never fixed a ticket and that no one, other than Kenney, has ever asked him to fix a ticket.^{19/}
29. Kenney did not think that what he asked Chief Fogg to do was "a big deal." Kenney testified that it was not "an unusual thing," particularly in light of Caseau's mitigating circumstances. He felt that whether to give a warning as opposed to a ticket was the police officer's discretion. As a former police officer, he usually used his discretion to give warnings.
30. Caseau was a constituent of Kenney's. Kenney testified that he had a history of helping people out in Town and that he would have done the same thing for anybody in Town.
31. Kenney did not file any written disclosure consistent with § 23(b)(3) concerning this matter.

The Board's Oversight of Chief Fogg

32. The Board appoints the Chief and may remove him with or without cause by majority vote. It is also involved with various Police Department matters such as the overall budget and individual budget items, negotiating police union contracts, acting as its appointing authority, handling certain disciplinary matters and reviewing the Chief's proposed rules and regulations.
33. The Board's decisions on Police Department matters have an effect on Chief Fogg's ability to do his job. It was important for Chief Fogg to have a good working relationship with the Board members because they are his boss and the elected representatives of the people of the community.^{20/}
34. In May 2001, Chief Fogg was in the middle of a five year contract. The Board was aware that he was looking for other employment. In June 2001, it voted to amend his employment agreement to increase his compensation. Kenney voted in favor of the amendment.
35. The Board conducted annual performance evaluations for Chief Fogg. Kenney gave Chief Fogg a score of 38 out of 45 points on his Employee Performance Evaluation dated April 22, 2000. He also noted that Chief Fogg was "A very good police chief, knows his job, and does it well!!

36. Kenney gave Chief Fogg a score of 31 out of 45 points on his Performance Evaluation Rating Sheet in 2003 and noted: "On several occasions following through on complaints from my constituents I have asked for assistance from the P.C. either directly or through the Town Administrator. I have been unhappy with the results. . . . It should be understood that the Selectmen are the C.E.O. of the Town elected by the taxpayers of the Town and that the Chief ultimately reports to the B.O.S." It was the only performance evaluation that Chief Fogg received in eight years from any Board member which found fault with his performance other than another member who complained about Chief Fogg's not wearing a uniform.
37. Chief Fogg believed that it would have been very difficult for him to find another job if he had been terminated by the Board.^{21/}

IV. Decision

Section 23(b)(3) of G.L. c. 268A is violated if a municipal employee knowingly or with reason to know, "act[s] in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person." Section 23(b)(3) further provides that "[i]t shall be unreasonable to so conclude if such . . . employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion."

Thus, in order to establish a violation of G.L. c. 268B, § 23(b)(3), the Petitioner must prove, by a preponderance of the evidence,^{22/} that: Kenney (a) was a municipal employee; (2) who, knowingly or with reason to know, acted in a manner; (3) which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude; (4) that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.^{23/}

As the Commission has noted, "[t]here is no simple formula for identifying when . . . relationships are sufficiently significant that they implicate § 23(b)(3)."^{24/} In determining whether there has been a violation, the focus is on the perception of the citizens of the community, not the participants.^{25/} In upholding the Commission's interpretation of § 23(b)(3), the Supreme Judicial Court concluded:

We have . . . noted that the purpose of the statute "was as much to prevent giving the appearance of conflict as to suppress all tendency to wrongdoing." . . . The commission has stated that "[s]ection 23(b)(3) is concerned with the appearance of a conflict of interest as viewed by the reasonable person," not whether preferential treatment was given. . . . The commission has chosen to interpret this statute as a prophylactic measure, and the language of the statute accords with its interpretation.^{26/}

The Commission's rulings have concluded that "acting in a manner" refers to the taking of official action as a public employee.^{27/} "The Commission . . . evaluate[s] whether the public employee is poised to act in his official capacity and whether, due to his private relationship or interest, an appearance arises that the integrity of the public official's action might be undermined by the relationship or interest."^{28/}

Applying these legal principles to the facts, we find that the Petitioner has proven, by a preponderance of the evidence, that Kenney violated G.L. c. 268A, § 23(b)(3).

A. Municipal Employee

The OTSC alleges that Kenney was an employee of a municipal agency. Kenney admits^{29/} that he was at all relevant times a member of the Board and that he was an employee of a municipal agency.^{30/} We find, by a preponderance of the evidence, that Kenney was a municipal employee.^{31/}

B. Who, Knowingly or With Reason to Know, Acted in a Manner

The OTSC alleges that Kenney, knowingly or with reason to know, acted in a manner. Acting in a manner, as discussed above, refers to the taking of official action as a public employee. There was no evidence presented of any personal or social relationship between Kenney and Chief Fogg. Chief Fogg testified that he did not know Kenney until Kenney was elected to the Board and that he had only a business relationship and interaction with the Board members. Furthermore, Chief Fogg testified that he believed that Kenney was acting as a Selectman when he made his request given the lack of a personal relationship between the two and the fact that the Board was responsible for his hiring and firing as well as for a variety of police matters ranging from budget issues to its internal rules and regulations.

Kenney's testimony also supports the conclusion that he was acting as a Selectman when he made his request to Chief Fogg. Kenney testified that Caseau was one of his constituents. He further testified that he believed that Caseau told him about the ticket because he wanted his help as a Selectman. We find, by a preponderance of the evidence, that Kenney acted in a manner.

C. Which Would Cause a Reasonable Person, Having Knowledge of the Relevant Circumstances, to Conclude that Any Person can Improperly Influence or Unduly Enjoy his Favor in the Performance of His Official Duties or that He is Likely to Act or Fail to Act as a Result of Kinship, Rank, Position or Undue Influence of Any Party or Person

Kenney admits that he asked Chief Fogg if he could change Caseau's ticket to a warning.^{32/} The issue therefore, is whether the Petitioner has demonstrated, by a preponderance of the evidence, that Kenney knew or had reason to know that he was acting "in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that [Caseau] . . . unduly enjoy[ed] his favor in the performance of his official duties, or that he [was] likely to act or fail to act as a result of [Caseau's] rank or position."

Kenney admits that he knew Caseau and further, that he knew that Caseau was a member of the School Committee.^{33/} Kenney nominated Caseau for a position on the Town's Property Committee and then served on that Committee with him. He voted to appoint Caseau to the Zoning Board of Appeals. Kenney and Caseau served together on the Town Democratic Committee. Kenney testified that he and Caseau shared beers from time to time, sometimes after meetings as well as other times. He further testified that he was aware that Caseau was broke and had been out of work for five or six months. As

such, Caseau was not merely a constituent of Kenney's. Rather, he was a fellow Town official that Kenney had nominated for a Town position, voted on his nomination, served with on a board and committee and with whom he socialized on occasion. Under these circumstances, we find, by a preponderance of the evidence, that a reasonable person could conclude that Kenney acted in making his request to Chief Fogg as a result of Caseau's rank or position as a fellow Town official with whom he had socialized.

We further find, by a preponderance of the evidence, that a reasonable person could conclude that Caseau could unduly enjoy Kenney's favor in the performance of his official duty based on the nature of Kenney's request to Chief Fogg. The improper request was based on Kenney's understanding of an implied request from Caseau to use his position as a Selectman to assist him.

Kenney admits that he asked Chief Fogg to change the ticket to a warning not on the merits, but rather on the basis of Caseau's financial situation. Although he testified that he would have done the same thing for anyone in Town, there is no evidence in the record that Kenney has ever been asked to do so by anyone while a Selectman or that he has ever, in fact, asked Chief Fogg to change a ticket in any other situation. Moreover, although Kenney testified that his request was no "big deal" and that it was done all the time, the record does not contain any evidence to support these assertions or any evidence of a custom or practice in the Town's Police Department in such situations. In short, there is no evidence in the record to support Kenney's testimony on this issue.

In contrast, Chief Fogg testified that no one other than Kenney in this case had ever asked him to fix a ticket and that he has never done so. He further testified that "fixing a ticket" means to take some action outside of the proper legal channels to make the ticket go away or to change it from a citation to a warning. As such, Kenney's request to Chief Fogg was to Chief Fogg, an illegal request to fix a ticket. Moreover, Chief Fogg's belief that Kenney's request to change the ticket to a warning was illegal is consistent with the provisions of G.L. c. 90C.^{34/}

Kenney's own testimony supports this conclusion as well. Chief Fogg testified, and § 3(A)(1) of G.L. c. 90C expressly provides, that a police officer who observes a violation or has it brought to his attention, is vested with discretion in determining whether to issue the offender a warning or a citation. Kenney testified that while he was a police officer, he used his discretion to give warnings rather than citations. As such, his testimony as to the widespread nature of the practice and the exercise of discretion may be construed as a reference to the initial exercise of discretion made at the scene by the police officer. The lawful exercise of discretion in the first instance is distinctly different from an after the fact request made by a Selectman to the Chief of Police to make a change based not on the merits, but rather on the personal financial situation of the violator.

Finally, we find, by a preponderance of the evidence, that a reasonable person could conclude that the type of request made by Kenney was improper. Although it may be appropriate to ask that a ticket be reviewed to ensure that it was issued properly and not in error and that the person was not mistreated by the police officer, we find that a reasonable person could conclude that a Selectman asking the Chief of Police to change a ticket without providing any reason for that request was improper. Asking for a ticket to be reviewed to ensure that it was issued properly is significantly different from requesting an after the fact change in an official decision made by a law enforcement officer, particularly when there is no legitimate reason offered in support of the request. Moreover, even if Kenney had told Chief Fogg about his reason for requesting the change, *i.e.* Caseau's financial situation, we further find that a reasonable person could conclude that such a request was improper.

In conclusion, we find by a preponderance of the evidence that Kenney violated G.L. c. 268A, § 23(b)(3).^{35/}

V. Order

Having concluded that the Respondent violated G.L. c. 268A, § 23(b)(3) and pursuant to the authority granted it by G.L. c. 268B, § 4(j), the State Ethics Commission hereby **orders** Richard Kenney to pay a civil penalty of **\$500**.

SIGNED

E. George Daher, Chairman
Christine M. Roach
J. Owen Todd
M. Tracey Maclin

DATE AUTHORIZED: April 7, 2005
DATE ISSUED: April 28, 2005

^{1/} 930 CMR 1.00 *et seq.*

^{2/} Kenney also declined a subsequent offer to present a closing argument to the Commission at its February 3, 2005 meeting.

^{3/} Given Kenney's *pro se* status, the Presiding Officer accepted these letters as Kenney's brief.

^{4/} G.L. c. 268B, § 4(i); 930 CMR 1.01(9)(m)(1).

^{5/} The Presiding Officer was unaware of the existence of the letter until after the evidentiary hearing had been concluded.

^{6/} 930 CMR 1.02(8).

^{7/} April 21, 2004 Memo to File from Chief Gordon Fogg.

^{8/} April 16, 2004 newspaper article entitled *State Police lieutenant could face discipline*.

^{9/} The memo was stricken as an exhibit during the December 1, 2004 evidentiary hearing based on the testimony of Gordon Fogg that it was a disciplinary file which was a confidential matter, not for public disclosure. See G.L. c. 4, § 7, Clause Twenty Sixth (c) & (f).

^{10/} Although the Presiding Officer advised Kenney that he could submit materials demonstrating that the memorandum was not confidential, Kenney did not do so.

^{11/} The Presiding Officer found Chief Fogg's testimony on this point to be credible.

^{12/} Section 13A of G.L. c. 90 provides that the seat belt law “shall be enforced by law enforcement agencies only when an operator of a motor vehicle has been stopped for a violation of the motor vehicle laws or some other offense.”

^{13/} *Id.*

^{14/} *Id.*

^{15/} *Id.*; G.L. c. 90C, § 3.

^{16/} Although Kenney testified that the only thing he knew about was an inspection sticker, in both his Answer and the Stipulations of Fact and Law that he signed, he admitted that he “asked [Chief Fogg] to change [Caseau’s] seatbelt violation ticket to a warning.” Answer, ¶8; Stipulations of Fact and Law, ¶9. To the extent that his testimony is inconsistent, we credit his Answer and the Stipulations of Fact and Law.

^{17/} The Presiding Officer found Chief Fogg’s testimony on this point to be credible.

^{18/} The Presiding Officer found Chief Fogg’s testimony on this point to be credible.

^{19/} The Presiding Officer found Chief Fogg’s testimony on this point to be credible.

^{20/} The Presiding Officer found Chief Fogg’s testimony on this point to be credible.

^{21/} The Presiding Officer found Chief Fogg’s testimony on this point to be credible.

^{22/} 930 CMR 1.01(9)(m)(2).

^{23/} *In Re Mazareas*, 2002 SEC 1050, 1053 (*footnote omitted*).

^{24/} *In Re Massa*, 1998 SEC 910, 912.

^{25/} *In Re Hebert*, 1996 SEC 800, 810.

^{26/} *Scaccia v. State Ethics Commission*, 431 Mass. 351, 359 (2000) (*citations omitted*).

^{27/} *In Re Mazareas*, 2002 SEC at 1054; *In Re Flanagan*, 1996 SEC 757, 763.

^{28/} *In Re Hebert*, 1996 at 810; *In Re Mazareas*, 2002 SEC at 1054.

^{29/} Answer, ¶¶ 3-14; Stipulations of Fact and Law, ¶3.

^{30/} Municipal agency is defined as “any department or office of city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.” G.L. c. 268A, § 1(f).

^{31/} Municipal employee is defined in relevant part as “a person performing services for or holding an office, position, employment or membership in a municipal agency whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.” G.L. c. 268A, § 1(g).

^{32/} Answer, ¶8; Stipulations of Fact and Law, ¶9.

^{33/} Answer, ¶7; Stipulations of Fact and Law, ¶6.

^{34/} Section 2 of G.L. c. 90C, referred to as the “No Fix Law,” provides for the manner in which citations are to be given. Sections 9 and 10 govern what may be done with a citation after it has been issued. Section 9 provides that it is unlawful and official misconduct to dispose of a citation in a manner other than as required by the provisions of c. 90C. Section 10 prohibits knowingly falsifying a citation or disposing of a citation other than as required by the provisions of c. 90C. Once Caseau received the ticket, he had the option of either paying the fine or requesting a hearing to contest responsibility. G.L. c. 90, § 13A; G.L. c. 90C, § 3. G.L. c. 90C does not contain any express provision that would allow a ticket to be changed by a police officer after it has been issued based solely on the financial situation of the violator. Such a request appears contrary to both the express language of the statute and one of the purposes underlying the no-fix law to prevent manipulation or misuse of the citation process. *Commonwealth v. Carapelluci*, 429 Mass. 579, 582 (1999).

^{35/} In light of our finding, we do not address the issue of whether a reasonable person, having knowledge of the relevant circumstances, could conclude that Chief Fogg could improperly influence or unduly enjoy Kenney’s favor in the performance of his official duties or that Kenney was likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.